

## REMARKS

Reconsideration of this application in view of the following remarks is requested. After entry of this reply, claims 1-13, 15-30 and 32-47 are pending in the application. Claims 1, 11, 19 and 29 are amended and claims 34-47 are added (claims 14 and 31 were previously canceled).

Please note and record our change of Attorney Docket Number in this matter to: 119645-00103.118.

In the office action dated August 24, 2006, the Examiner rejects claims 1-5, 7-13, 15-16, 18-23, 25-30 and 32-33 under 35 USC §103(a) as unpatentable over Powell (U.S. Patent No. 6,195,590) in view of Chapman (U.S. Patent No. 5,128,860), and objects to claims 6, 17 and 24 as being dependent upon a rejected base claim, but would allow these claims if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. The Examiner further characterizes the elements of claim 17 allowable if added to claim 19.

### *Allowable Subject Matter*

In view of the Examiner's above-referenced claim objections based on allowable subject matter, Applicant adds claims 34-39. Claim 34 represents dependent claim 6 rewritten in independent form to include all of the limitations of base claim 1. Claim 35 represents dependent claim 17 rewritten in independent form to include base claim 1. Claim 36 is dependent on claim 35, and presents the features of claim 18 presently dependent on claim 17.

Further, claim 37 represents dependent claim 24 rewritten in independent form to include all of the limitations of base claim 19. Claim 38 represents dependent claim 17 rewritten in independent form to include the limitations of base claim 19. Claim 39 is

dependent on claim 38, and presents the features of claim 18 presently dependent on claim 17.

***Claim Rejections – 35 USC § 103***

The Examiner rejects claims 1-5, 7-13, 15-16, 18-23, 25-30 and 32-33 under 35 USC §103(a) as unpatentable over Powell (U.S. Patent No. 6,195,590) in view of Chapman (U.S. Patent No. 5,128,860). Applicant respectfully traverses the Examiner's §103(a) rejections, as Powell and Chapman do not teach or suggest all of the claimed limitations.

In the August 24, 2006, office action, the Examiner states that she relies on Powell to disclose comparing the scheduled completion date with the requested completion date for each selected item order, and to teach deriving a customer service measurement comprising a measurement of at least one of time and money for each selected item order based on the comparison. The Examiner further states that Chapman is relied upon to teach different aspects and information that would be included in a comparison, including aspects and information arranged in arrays.

Applicant asserts that Powell and Chapman are not directed to comparing the scheduled completion date with the requested completion date for item orders. Powell and Chapman are directed to itemizing a sequence of operations necessary to complete a task, to efficiently manage all of the operations necessary to complete the task. To be sure, Powell references the Critical Path Method (CPM) and Project Evaluation and Review Technique (PERT), at col. 1, lines 23-34, where a network of activities are created that represent the sequence of operations, and interdependency of operations, involved in a typical production or construction process. The network of activities are analyzed to find the critical path of necessary serial activities responsible for the longest durational path through the activities, and therefore defining a final process completion date.

Further, Powell, at col. 2, lines 16-36, states that the invention establishes a network of manufacturing activities, assigns time duration estimates to each activity, and establishes baseline schedule dates for the beginning and end of each activity (to compare to other activities to establish the critical path). The baseline schedule date data set is used as a constant reference against which all supporting external components availabilities and actual and predicted internal progress is measured. The principal control variable is a measure of the projected or actual deviation from the baseline schedule data set and is called the delta or delta value. The delta value is used to determine the predicted final completion date (of all necessary activities), allocate resources, and optimally organize work in a queue.

Consistent with this premise is Chapman, where at col. 4. lines 61-65 states that “the above described process is desirably repeated for each value of j and for each resource p and demand q until a series of beginning and ending times is obtained for completing the entire desired manufacturing or service sequence on all of the needed resources.” Accordingly, neither Powell nor Chapman are directed to a comparison of item orders, or to customer line item orders, where each customer line item is an individual customer requested product for purchase. Therefore, neither Powell nor Chapman, either alone or in combination, teach or suggest all of the limitations of independent claims 1 and 19 (or of the added independent claims).

Regarding dependent claims 4, 5, 22 and 23, the Examiner states at page 6 of the 2 February 2006 office action that Powell also considers value (or cost) in the measurement (at col. 6, lines 30-40 and 55, and at col. 7, line 15 and lines 25-45). Applicant respectfully disagrees that these recitations of Powell disclose, teach or suggest the invention as claimed. Powell teaches that the project manager must estimate costs associated with recovering the lost time illustrated by the invention determined delta values. The project manager, however,

must estimate these costs outside of, and separate from, the invention of Powell. The project manager must then decide (again, outside of, and separate from, the invention of Powell) whether the costs associated with recovering the lost time, as illustrated by the delta values, are worth expending, or whether it might just be better to be late.

These recitations of Powell do not disclose, teach or suggest the features of claims 4, 5, 22 and 23, wherein, as part of the claimed invention (not separate and apart from the invention, as in Powell), the customer service measurement includes a derivation of the value of the customer requested product that is late, or includes a derivation of the value of the customer line item that is late multiplied by the amount of time difference between the requested completion date and a scheduled completion date.

Regarding dependent claims 11 and 29, Applicant contends that neither Powell nor Chapman, either alone or in combination, could disclose, teach or suggest, determining a customer service measurement for a first and second customer based on the customer service measurement for each item order from each of the first and the second customer. Since each item in Powell and Chapman is a single activity in a network of necessary and related activities (some in parallel and some serially arranged), where all of the activities result in the completion of a single project or process, how could Powell or Chapman determine a total customer service measurement for a single customer relative to another customer, based upon a totality of all customer requested products originating from a single customer relative to another customer. Applicant further asserts that this general logic is also applicable to at least dependent claims 12 and 13.

Lastly, the Examiner has characterized claim 17 as allowable, if combined with base claim 1 or base claim 19. Applicant respectfully requests confirmation that claim 18, dependent on claim 17, would also be allowable.

A rejection under §103 requires a showing of all of the following: 1) there must be some suggestion or motivation to modify or combine the references as suggested by the Examiner (it is not sufficient to say that the cited reference can be modified or combined without a teaching in the prior art to suggest the desirability of the modification; 2) there must also be a reasonable expectation of success; and 3) the references must teach or suggest all limitations of the claims. The teaching or suggestion to combine or modify the applied art and the reasonable expectation of success must both be found in the prior art and not in Applicant's specification (MPEP § 2143).

Accordingly, since neither Powell nor Chapman, either alone or in combination, teach or suggest all of the claimed limitations, and since Powell and Chapman do not provide a suggestion or motivation to modify the references to meet the claimed invention, Applicant respectfully requests that the Examiner withdraw the 35 USC §103 rejections.

***Claims Added by this Response and Amendment***

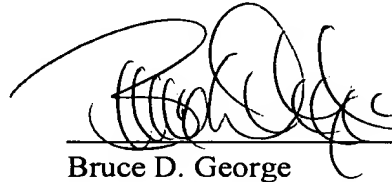
Claims 34-47 are added by this Response and Amendment. Claims 34-39 are added in view of the allowable subject matter, as discussed above.

Claims 40-47 are added to more completely cover certain aspects of Applicant's invention. The recitations of claims 40-47 are patentable over the prior art of record for the reasons detailed above, since the added claims include features similar to those presently and variously recited. Additionally, for this reason the added claims find support throughout the specification and the drawings.

**CONCLUSION**

In light of the above amendments and remarks, Applicant submits that pending claims 1-13, 15-30 and 32-47 are allowable, that the application is in condition for allowance, and requests that the Examiner issue an early notice of allowance. The Examiner is invited to call the undersigned attorney in the event that a telephone interview will advance prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Bruce D. George', is written over a horizontal line.

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